

# Exhibit A

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
SUSANNA MIRKIN and BORIS MIRKIN,  
Individually and on Behalf of All Others  
Similarly Situated,  
Plaintiffs,  
vs. No. 18 Civ. 2949 (ARR) (RER)  
XOOM ENERGY, LLC and XOOM ENERGY  
NEW YORK, LLC,  
Defendants.

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VIDEOTAPED DEPOSITION OF  
SEABRON ADAMSON  
Tuesday, November 8, 2022  
10:06 a.m.  
Veritext  
101 Arch Street  
Boston, Massachusetts 02110

Laurie K. Langer, RPR

1           A. XOOM is allowed to make a profit, but it has to  
2       corres -- but it has to -- it has to meet the conditions  
3       of the contract that it's on. Lots of --

4                   MR. WITTELS: Let him answer.

5           A. Lots of companies sign contracts. Somebody signs  
6       a contract to rehabilitate the building across the way  
7       here; right? They say, "oh, we signed the contract, and  
8       by the way, to rehabilitate this building it's going to  
9       cost \$10 million." That's the price. It may cost nine  
10      in which case they make a profit or it may cost eleven  
11      in which they don't make a profit. The key is if you  
12      have a contract that they said that they were going to  
13      do it for \$10 million, then they're locked in to their  
14      contractual commitment.

15                  Of course XOOM is able to make a contract as long  
16      as -- make a profit, but it's got to meet its  
17      contractual obligation.

18           Q. Okay. Here's what I'm trying to do. I'm trying  
19      to set a baseline --

20           A. Uh-huh.

21           Q. -- to be sure we're on the same page about what  
22      measure you used to determine whether or not --

23           A. Uh-huh.

24           Q. -- XOOM set its rates consistent with the sales

1       that compares XOOM's variable rate charges to what  
2       customers would have been charged by the utility during  
3       the same time period?

4                   MR. WITTELS:  Objection.

5       A.  No.  The damage models as we discussed are the  
6       two.

7       Q.  Right.  And you don't intend to offer an opinion  
8       about that?

9       A.  No.  The only thing we used was a, as a graphical  
10      comparison on the relationship between supply costs and  
11      the utility rate, as an example.  But the two models are  
12      the two models.

13      Q.  Yep.  Okay.  Are you offering an opinion about  
14      what is a reasonable or appropriate margin for an ESCO  
15      to charge?

16      A.  Well, to build the second model we needed an  
17      estimate of a margin.  We really didn't have any  
18      information that would allow that to be created, since  
19      XOOM had, from what we can tell, had never done it that  
20      way.  They had never tried to calculate a, or they did  
21      not present in any way, I can't say that they never  
22      tried.  They did not present in the rate setting  
23      workbooks and other information calculations of any sort  
24      like that.  So we used the margin from fixed rate

1 customers as a proxy of a rate that XOOM itself had  
2 used. I can't go further than that because there's no  
3 information.

4 MR. MATTHEWS: Can you read my question  
5 back, please.

6 (Prior testimony read back.)

7 "Are you offering an opinion  
8 about what is a reasonable or  
9 appropriate margin for an ESCO  
10 to charge?"

11 A. Yeah. Conceptually, yes. Conceptually, yes.

12 Thanks for reading that back.

13 Q. That's okay. And what is the opinion that you're  
14 offering conceptually about that?

15 A. Well, I mean, it's obviously related to the  
16 contract that we've been discussing, whether it's based  
17 on supply costs, that, you know, if the Court were to  
18 decide that a margin was allowed, that it can't be an  
19 uncapped margin, that's why we made a second calculation  
20 using the fixed rate margin as a proxy of what might be  
21 an acceptable margin.

22 Q. Are you offering any opinion about what is an  
23 acceptable or appropriate, a reasonable margin aside  
24 from just using XOOM's fixed rate margin?

1           A. We haven't offered that opinion, we don't have  
2 any information to do that.

3           Q. Do you intend to?

4           A. If information were to be provided, but that  
5 would have to come from XOOM. So I, in the absence of  
6 not expecting anymore information to come, no.

7           Q. Well, we've gotten talking past each other again.  
8 I'm talking conceptually. You've said that it will be  
9 for the Court to decide whether a margin can be charged  
10 and if so what's appropriate; right?

11          A. Right.

12          Q. And if we go to trial --

13          A. Uh-huh.

14          Q. -- and you take the witness stand --

15          A. Uh-huh.

16          Q. -- and I'm asking you questions and the judge  
17 gets frustrated with my questions and says, "let's cut  
18 to the chase. Mr. Adamson, what do you think is an  
19 appropriate margin for an ESCO to charge?" What would  
20 your answer be?

21                 MR. WITTELS: Objection.

22          A. I would say conceptually it's got to be related  
23 to the, related to the costs. And in a broad conceptual  
24 basis.

1 Q. And if he said, "but can you give me a cutoff  
2 point? Is there a number that you can assign to that?"  
3 Would you be able to give him one?

4 MR. WITTELS: Objection.

5 A. I wouldn't be able to give him a number on the  
6 stand because I wouldn't have the, XOOM's internal  
7 information, no.

8 Q. Okay. So the margin in your view, --

9 A. Uh-huh.

10 Q. -- the margin that is appropriate for an ESCO to  
11 charge conceptually --

12 A. Uh-huh.

13 Q. -- is ESCO specific?

14 A. Well, again, we're talking about relation to a  
15 specific contract, so.

16 Q. I'm not.

17 A. You're not.

18 MR. WITTELS: Don't interrupt him.

19 A. I am talking -- sorry. I'm talking about this  
20 specific contract. Other ESCOs may have, and I'm sure  
21 do, very different contractual forms. And in fact,  
22 ESCOs -- even the same ESCO will have lots, may have  
23 different pricing, right, under different arrangements.  
24 We're talking about variable rate pricing here as

1       opposed to fixed rate pricing.

2           Q.   Uh-huh.

3           A.   Fixed rate pricing, I think we can all agree, the  
4       actual outturn margins could be quite different. A lot  
5       depends on timing in that case; right? Okay. So I  
6       don't know that there is a "single ESCO number" I don't  
7       think that's a meaningful concept.

8           Q.   Okay. Is there a single ESCO number for variable  
9       rates that in your opinion would be a cap on what is an  
10      appropriate or reasonable margin?

11          A.   I don't have a number in mind because I don't  
12      know what the, what would be claimed to be the types of,  
13      of costs that, to be recovered in that margin. What I  
14      don't -- you know, I don't have a number. What I am  
15      offering is conceptually that the margin has to be based  
16      on something from reality to be meaningful in the  
17      context of this contract, and, you know, can't be  
18      arbitrary.

19          Q.   Okay.

20          A.   But I don't have a number to give you.

21          Q.   Okay. And would not be able to create one?

22                  MR. WITTELS: Objection.

23          A.   Not -- not on the information available right  
24      now. I think that would need more inputs than are



1           A. Well, in a sense, yes, because the, you  
2           know -- well, first off, the fix rate is used as, you  
3           know, a way of coming up with a reasonable margin that,  
4           based on what XOOM itself set rates on. You know, it's  
5           not -- it's based on the information available.

6           So one question then comes to, you know, are, is  
7           there some reason that, that XOOM would need to charge a  
8           higher rate on fixed rate customers? If so I don't  
9           really see what it is.

10           MR. WITTELS: Variable.

11           A. Sorry. On variable rate customers. I am -- we  
12           don't have any information to, to delve into that.

13           Q. I'm asking conceptually. And it's okay if you  
14           are not offering this opinion. I'm not saying you  
15           should or you shouldn't be. I just want to know in this  
16           case are you going to offer an opinion that it is not  
17           fair for XOOM to seek a higher margin on variable rates  
18           conceptually than it does on fixed rates?

19           A. In this context, yes. Because there is no XOOM  
20           provided despite all of the information about how those  
21           methods were set of how these margins came up. How  
22           these -- how the variable rate margins were determined  
23           and that's a reasonable proxy, yes.

24           Q. Are you offering that opinion more broadly, that

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand and seal this 11th day of November, 2022.



NOTARY PUBLIC

Commission Expires

7/27/2023